

### **REMARKS/ARGUMENTS**

In view of the amendments and remarks herein, favorable reconsideration and allowance of this application are respectfully requested. By this Amendment, claims 11 and 15 have been amended. Thus, claims 11-20 are pending for further examination.

#### **Objections to the Claims**

Claims 11-20 are objected to because of alleged informalities. Claim 11 has been amended to improve the form thereof. Thus, Applicant respectfully requests that this objection be withdrawn.

#### **Rejections under 35 USC 103**

Claim 11 remains rejected under 35 USC 103 as being obvious over Martin (US 5,355,302) in view of Kim (US 5,521,918), Ludwig (US 5,689,641), and Fujinami (US 5,521,922). For at least the following reasons, Applicant respectfully submits that currently amended independent claim 11 is not rendered obvious by the cited references.

Applicant respectfully submits that the alleged combination recited in the Office Action can only be the result of improper hindsight. Applicant notes that in the rejection of claim 11, the Office Action modifies Martin eight times based on three references and officially noticed assertions. Also with respect to claim 11, the Office Action alleges that buffers are inherent to multitasking operating systems without citing a reference or taking Official Notice of the same. Applicant notes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or

implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See MPEP 2143.01. The mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Applicant notes that the Office Action only introduces the concept of buffers after introducing Ludwig, asserting (1) that it would have been obvious to use a multitasking operating system with a payment-based audiovisual reproduction system, and (2) that buffers are inherent in multitasking operating systems. Even if the former assertion were true, the latter is not supported by any prior art of record or any proper official notice. Without more, this bare assertion cannot be used as the basis for introducing the concept of buffers into an already tenuous link between payment-based audiovisual reproduction system and multitasking operating systems.

Ludwig does teach that “buffering is provided by the operating system software to guarantee continuous flow of the audio/video data.” However, this statement is wholly unrelated to multitasking. Rather, it is related to the practical difficulty of dealing with bandwidth constraints across a network (WAN or LAN). Even this connection to buffers is slight, as the invention defined by the claims uses buffers *within* a payment-based audiovisual reproduction system rather than *across a network*. Thus, Applicant respectfully submits that one of ordinary skill in the art would not consider the use of buffers in the combination alleged in the Office Action.

Applicant also respectfully submits that one of ordinary skill in the art at the time of the invention would not combine the teachings of Martin and Kim. Martin appears to be directed to techniques for managing a plurality of computer jukeboxes at different locations from a central station, whereas Kim appears to relate to demultiplexing an input bit stream in accordance with the full or empty level of a buffer memory for storing the bit stream. Thus, Applicant respectfully submits that the teachings of Martin and Kim are incompatible, or, at a minimum, that their combination is beyond the level of ordinary skill in art.

Moreover, even if the introduction of Kim were appropriate, it still would not make up for the deficiencies with Martin and Ludwig. Specifically, Kim does not teach respective status buffer means being put into an active state if one of the two corresponding temporary buffers is empty, as required by amended independent claim 11. Moreover, because Ludwig relates to buffering data received by a peripheral (network card) and decoded by software, its teachings are not applicable to the invention defined by the claims, which relates to buffering data that is decompressed and then sent to a peripheral for reproduction.

For similar reasons, the introduction of Fujinami is inappropriate. For example, because the other references do not obviously present a system with a multitasking operating system and separate audio and video tasks to be buffered, there is no motivation to prioritize such tasks. Thus, even with the introduction of Fujinami, one of ordinary skill in the art would not achieve the invention defined by the claims. Indeed,

the techniques disclosed in Fujinami are hardly analogous to a payment-based audiovisual reproduction system.

Applicant respectfully submits that dependent claims 12-20 are allowable at least by virtue of their dependence from allowable currently amended independent claim 11. Thus, Applicant respectfully submits that all pending claims are not rendered obvious and are in condition for allowance.

### **Applicant's Objections to Officially Noticed Facts**

The MPEP states that "In limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on 'common knowledge' in making a rejection, however such rejections should be judiciously applied." *See* MPEP 2144.03. Applicant notes that the Office Action contains *nine* officially noticed assertions. Applicant objects both to the officially noticed assertions and to the overly-zealous application of Official Notice in this instance.

Official Notice is taken that a digital display is well-known in the art. Although Applicant objects, the claims have been amended to remove the recitation of digital display means, opting instead for the more generic "display" limitation rather than the recitation of means-plus-function language.

Official Notice is taken that storing software on a storage medium such as a hard disk or CD-ROM is well-known in the art. Applicant notes that while storing software on a storage medium may have been well-known at the time of the invention in other arts (e.g. storing Windows on a PC's hard drive), this technique was not well-known in the

area of payment-based audiovisual reproduction systems. Even if the inclusion of operating systems was known in the area of payment-based audiovisual reproduction systems, claim 11 requires the storage of a multitasking operating system. Applicant respectfully submits that multitasking operating systems were not well-known in the art at all, much less as being stored on the hard disk of a payment-based audiovisual reproduction system.

Official Notice is taken that the functions of a priority resolution module and a scheduling module are well-known in the art. Applicant notes that such functionality is not inherent in multitasking (e.g. multitasking can be achieved by rapidly switching between threads with no regard for priority or scheduling) or storage (e.g. FIFO queues can be used instead). Applicant also notes that the mere recitation of increasing a system's robustness and/or available resources is not talismanic and therefore should not be used in a hindsight manner without regard for the level of ordinary skill in the art at the time of the invention. Accordingly, Applicant objects to this officially noticed fact.

Official Notice is taken that temporary buffers are well-known in the art. This may be technically true in some arts (e.g. to some extent, nearly all buffers used in computer systems are temporary because most memory is volatile). However, as Applicant has consistently argued, the use of any buffers at all in a payment-based audiovisual reproduction system was not well-known. Thus, while this officially noticed fact may be technically accurate in some arts, its application to the claimed invention is factually misplaced.

Official Notice is taken that a manager is well-known in the art. Applicant notes that the manager recited in claim 15 relates to a person, not, for example, a software and/or hardware mechanism. Thus, Applicant objects to this officially noticed fact.

Official Notice is taken that storing an operating system on a hard drive is well-known in the art. This may be technically true in some arts (e.g. storing Windows on a PC's hard drive), but this technique was not well-known in the area of payment-based audiovisual reproduction systems, especially for the purpose recited. To the contrary, it often will be advantageous to store certain information in a memory while hard drives are replaced. Thus, Applicant objects to this officially noticed fact.

Official Notice is taken that storing status information in a hard disk is well-known in the art. This may be technically true in some arts (e.g. storing the Windows settings on a PC's hard drive), but this technique was not well-known in the area of payment-based audiovisual reproduction systems, especially for the purpose recited. To the contrary, information stored on hard disks often is corrupted during a fault and thus storage thereon is not advantageous. Instead, it may be advantageous to store some settings in a non-volatile memory. Thus, Applicant objects to this officially noticed fact.

Official Notice is taken that hiding system files is well-known in the art. Applicant objects to this officially noticed fact in relation to the claimed invention because the purpose of hiding files may be different for payment-based audiovisual reproduction systems than for other art areas. For example, such information may be

hidden to prevent ordinary users (e.g. bar patrons) from altering system settings, while managers may have complete control over such files.

Official Notice is taken that fixing a price for a title is well-known in the art. Charging fixed prices for plays of instances of media may be well-known in relation to conventional jukeboxes. However, Applicant submits that payment-based digital audiovisual reproduction systems were new at the time of the invention. Applicant also submits that the modifications necessary for modifying the microprocessor and/or operating system to work with the fee collection mechanism were not obvious. Thus, Applicant objects to this officially noticed fact.

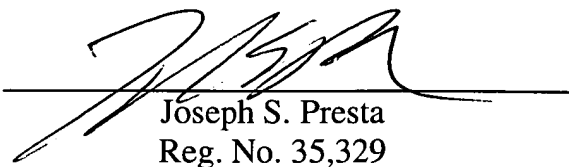
### **Conclusion**

For at least the foregoing reasons, Applicant respectfully submits that the invention defined by the amended claims herein is not taught or suggested by the prior art of record. Thus, withdrawal of the rejections and allowance of this application are earnestly solicited.

Respectfully submitted,

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